

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

DONALD MCDONALD,

Plaintiff,

vs.

**C E MINERALS, INC. and MULLITE
COMPANY OF AMERICA**

Defendant.

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CIVIL ACTION NO. 1:03 - CV - 81 - 1 (WLS)

JURY TRIAL REQUESTED

Kathy Ellerbe

COMPLAINT FOR DAMAGES

COMES NOW Donald McDonald, hereinafter “McDonald” by counsel, Spurgeon Green, III, Attorney At Law, and files this Complaint For Damages against C E Minerals, Inc. and Mullite Company of America, hereinafter “CE Minerals”, the above-named Defendants and states as follows:

I. PRELIMINARY STATEMENT

Plaintiff brings this action pursuant to Potts et al. v. UAP-GA.AG CHEM., INC. et al, 506 SE2d 101 (Ga 1998) citing Johns-Manville Products Corporation, Petitioner v. Contra Costa Superior Court, Respondent, Reba Rudkin, Real party in Interest, Cal., 612 P.2d 948. The Plaintiff seeks to redress the derivation of his rights, privileges and immunities secure by the laws of the United States and the State of Georgia. Plaintiff seeks monetary damages in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) as a remedy to his claims that arise out of said actions. Plaintiff seeks attorney’s fees against Defendants in connection with said case pursuant to O.C.G.A. Section 51.-12-5.1. Plaintiff seeks punitive damages against Defendants in connection with said case pursuant to O.C.G. A. Section 51-12-5.1(c). The Plaintiff also request this Court exercise

(1)

its supplemental jurisdiction so that the Plaintiff can bring state law claims.

II. PARTIES

McDonald is a resident of the city of Oglethorpe in Macon County, Georgia. Plaintiff's residence is located in the Macon County, Georgia. Plaintiff began employment with C E Minerals on or about February 15, 1993, which sales and distributes silica at several plants.

C E Minerals, Inc. is a corporation duly authorized under the laws of the State of Delaware, and has a principal address of 901 East 8th Avenue, King of Prussia, Pennsylvania 19406. Mullite Company of America is a corporation incorporated under the laws of the State of Georgia.

III. JURISDICTION AND VENUE

Venue lies in this Court pursuant to O. C. G. A. Section 9-2-61, because Plaintiff filed his original action in State Court and filed a voluntary dismissal with the right to re-file this claim within six (6) months after said dismissal. Jurisdiction in this matter is based upon diversity of citizenship pursuant to 28 U.S.C. 1332, where parties are citizens of different states.

IV. FACTUAL ALLEGATIONS SUPPORTING CAUSE OF ACTION

1.

Plaintiff was hired by C E Minerals on or about August 21, 1987, as a machine operator.

2.

Plaintiff worked under the supervision of terminal manager, Bob Schuster, who had a duty to inform Plaintiff of the effects of being exposed to silica for a prolonged period of time.

3.

While Plaintiff worked under the supervision of Bob Schuster, he was subjected to silica,

which damaged his lungs causing him to acquire lung cancer secondary to silicia exposure.

4.

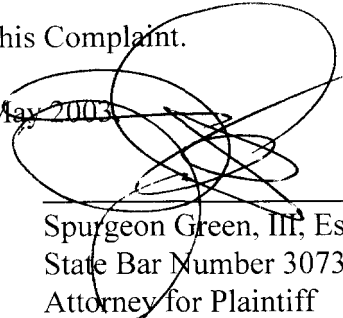
Plaintiff's current claim whereby he was exposed to said chemical on the job prior to his diagnosis and hospitalization did not arise out of or in the course of employment, and thus, Worker's Compensation Act's exclusive remedy provision does not apply; moreover the damages claimed by plaintiff herein resulted from the intentional misconduct of management and the employer subsequent to the physical injuries which gave rise to the original worker's compensation claim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Donald McDonald prays the Honorable Court provide as follows:

- (a) Compensatory damages due by law from Defendants to Plaintiff;
- (b) Back pay;
- (c) Attorney's fees pursuant to O.C.G.A. Section 51.-12-5.1.;
- (d) Plaintiff requests a jury trial on all questions of fact raised by this Complaint; and,
- (e) Punitive damages pursuant to O.C.G. A. Section 51-12-5.1(c).; and,
- (f) Any other relief that the Honorable Court deems just and equitable or as may be necessary to give relief sought in this Complaint.

Respectfully submitted, this 12th day of May 2003



Spurgeon Green, III, Esquire
State Bar Number 307345
Attorney for Plaintiff

LAW OFFICES OF SPURGEON GREEN, III
ATTORNEY AT LAW
301 WATSON BOULEVARD
WARNER ROBINS, GEORGIA 31093
TEL: (478) 929-0390
FAX: (478) 929-0396